SINGAPORE REPORTS

VIRGINIA DEVELOPMENTS PTE. LTD. v. BEHEM INVESTMENT PTE. LTD.

[O.C.J. (Chao Hick Tin J.C.) 19 April 1988]

[Singapore – Originating Summons No. 1297 of 1987]

Land Law – Sale and purchase of property – Contract rescinded and repudiated – Caveat lodged – Whether caveat can still be lodged after contract has been rescinded and repudiated – Whether defendants have an interest in the property after they have repudiated the contract.

The defendants offered to purchase on 15 October 1987 a property at Keppel Road from the plaintiffs. Pursuant to the conditions of sale, the defendants paid 5% of the offer price as deposit. The offer of the defendants was accepted by the plaintiffs.

Under another clause in the conditions of sale, the defendants were required to pay the balance of the 10% deposit within 14 days of the acceptance of the offer, *i.e.* by 30 October 1987. This the defendants had failed to do and following requests from the defendants, three extensions were granted by the plaintiffs. The third extension was up to 2.00 p.m. on 9 November 1987.

On 7 November 1987, the defendants lodged a caveat against the said property. Notwithstanding the extensions granted, the defendants failed to pay by 9 November 1987. As a result and in exercise of the rights conferred under one of the clauses of the conditions of sale, the plaintiffs on 10 November 1987 gave notice that the 5% deposit would be forfeited and legal proceedings would be commenced. However on 11 November 1987, the defendants wrote to the plaintiffs giving notice that the defendants were rescinding and repudiating the contract. The plaintiffs took out an originating summons, pursuant to section 111 of the Land Titles Act, for an order that the caveat lodged by the defendant be removed.

Held, granting the order: from the date the defendants repudiated the contract, they no longer have any interest in the said property as purchasers. Their interest was only to recover the deposits paid to the plaintiffs.

Cases referred to:

(1) *Whitbread & Co. Ltd.* v. *Watt* [1902] 1 Ch. 835 (cited).
(2) *Rose* v. *Watson* (1864) 10 H.L.C. 672; 11 E.R. 1187 (cited).
(3) *Buxton* v. *Packaging Specialists Sdn. Bhd.* [1987] 1 M.L.J. 342 (folld).
(4) *Frankcombe* v. *Foster Investment Pty Ltd.* [1978] 2 N.S.W.L.R. 41 (folld).

ORIGINATING SUMMONS.

Aloysius Leng for the plaintiffs.

Laurence John Wee (*Joyce Fung (Miss)* with him) for the defendants.

Cur. Adv. Vult.

Chao Hick Tin J.C.: In response to an invitation to tender, the defendants offered on 15 October 1987 to purchase the property known as Keppel House at 11, Keppel Road, Singapore (Lot Nos. 797 and 799 of TS 23) from the plaintiffs at a sum of $27,003,800. The offer was made subject to certain conditions of tender (conditions). Pursuant to clause 5 of the conditions, the defendants paid to the plaintiffs a sum of $1,350,190 being 5% of the offer price as deposit. This offer was accepted by the plaintiffs on the next day, 16 October 1987.

Under clause 8 of the conditions, the defendants were required to pay the balance of the 10% deposit within 14 days of the acceptance of the offer, *i.e.* by 30 October 1987. This the defendants had failed to do and following requests from the defendants, three extensions were granted by the plaintiffs subject to late payment interest. The third extension was up to 2.00 p.m. on 9 November 1987.

On 7 November 1987, the defendants lodged a caveat, No. CV/52448A, against the said property under section 107(1) of the Land Titles Act claiming interest as purchasers "by virtue of an offer to purchase made by the caveator dated 15 October 1987 and accepted by the registered proprietor by letter dated 16 October 1987 as to the estate or interest of the registered proprietor."

Notwithstanding the extensions granted, the defendant failed to pay by 9 November 1987. As a result and in exercise of the rights conferred under clause 11 of the conditions, the plaintiffs on 10 November 1987 gave the defendants seven days' notice of the former's intention to treat the deposit of $1,350,190 as forfeited and to commence legal action against the defendants to recover the balance of the 10% deposit.

However, on the next day, 11 November 1987, the defendants' solicitors wrote to the plaintiffs' solicitors giving notice to the plaintiffs that the defendants had thereby rescinded and repudiated the contract. The letter reads:

"We are instructed as follows:

(1) Your clients have, *inter alia*, misrepresented to our clients that:

(a) the title/tenure of the above captioned property was 'freehold', and

(b) the various office units in the building known as Keppel House are strata titled units.

(2) Further, your clients are in breach of the contract to purchase the said property in that they have misdescribed the title/tenure of the said property as being an 'estate in perpetuity'.

In the premises, we are instructed to and do hereby give your clients' notice that our clients hereby rescind and repudiate the said contract for misrepresentation and breach of contract. We are accordingly instructed to demand the repayment forthwith of the sum of $1,350,190 paid to your clients on or about 15 October 1987. Upon repayment of the aforesaid sum, our clients shall withdraw the caveat lodged against the said property on 7 November 1987.

Take notice that unless the said sum of $1,350,190 is paid to our clients or to us as their solicitors within three days from the date hereof we have firm instructions to commence proceedings without further reference and in which event our clients reserve their rights to claim damages, interest and costs."

One week later on 18 November 1987, the defendants instituted an action against the plaintiffs in the High Court (Suit No. 2976/87) claiming rescission of the contract, repayment of the sum of $1,350,190, a declaration that the defendants are entitled to a lien upon the said property to secure the repayment and damages. In the alternative, the defendants also asked for a declaration that the plaintiffs are discharged from further performance of the contract.

The present originating summons was taken out by the plaintiffs pursuant to section 111 of the Act for, *inter alia,* an order that Caveat No. CV/52448A lodged by the defendants against the said property be removed. The question before me is whether, in the circumstances of the case as set out above, the defendants are correct in refusing to remove their caveat.

Section 104(1) of the Act permits a person claiming "an interest in land" to lodge a caveat with the Registrar of Titles. The caveat lodged by the defendants prohibits the registration of any instrument affecting the said property "unless the caveator has consented in writing to such registration". "Interest" in relation to land is defined in the Act to mean "any interest in land recognized as such by law and includes an estate in land". However, I note that section 107(1) of the Act provides that "a caveat against land which is not under the provisions of this Act does not operate to forbid the registration of instruments affecting that land until it becomes registered land." The said property has not yet been brought under the Act. Both counsel did not refer to this provision and it seems that nothing turns on that sub-section.

Counsel for the defendants stated that it was made quite clear in the letter of 11 November 1987 that until the 5% deposit is refunded by the plaintiffs, the defendants would not remove the caveat. The defendants' main argument is that until the deposit is refunded, they have a purchaser's lien over the said property. Reference was made, among others, to *Whitbread & Co. Ltd.* v. *Watt*[1] and *Rose* v. *Watson.*[2] *Whitbread*[1] established the principle that a purchaser of an estate had a lien on the property for his deposit which he had paid when the contract for the purchase was determined without any default on his part. *Rose* v. *Watson*[2] was a case where the purchaser declined to complete the purchase because the representations on which he had been induced to enter into the contract were unfulfilled and the court held that the purchaser was entitled to claim a lien over the property for the moneys he had paid to the vendor.

For the purposes of the present proceedings, I do not think it is necessary for me to determine whether a purchaser's lien has in fact arisen in favour of the defendants. The real question for my determination is whether after 11 November 1987, the defendants still have any interest in the said property as purchaser under the contract constituted by the offer dated 15 October 1987 and the letter of acceptance of 16 October 1987.

Counsel for the plaintiffs submitted that as from 10 November 1987, the defendants can no longer claim an interest in the said property as purchaser because they had on that day treated the defendants' refusal to pay the balance of the 10% deposit as a repudiation of the contract. In any event, with effect from 11 November 1987, the defendants could no longer claim any interest as purchaser because they had also on their own accord rescinded and repudiated the contract. They were no longer interested in proceeding with the purchase. This was reaffirmed by the defendants in their Suit No. 2976/87 where they are claiming not for specific performance of the contract but for the refund of the 5% deposit.

At the end of the hearing of this orginating summons, I requested both counsel to do further getting-up and submit such additional authorities as they could find to be pertinent. It would seem that there is no Singapore authority on point. Several cases on the Malaysian National Land Code (NLC) were cited to me. I appreciate that there are substantial differences between the Malaysian NLC and our Land Titles Act and thus

the Malaysian cases would have to be approached with that caution in mind.

In the Malaysian case *Buxton* v. *Packaging Specialists Sdn. Bhd.*[3] the vendors forfeited the deposit after the purchaser failed to pay the balance of the purchase price on the due date. The purchaser alleged that the vendors had breached clause 10 of the agreement which contained a warranty or undertaking by the vendors that they had neither been served with any notice of any intended acquisition of the land by any authority nor were they aware of any such intended acquisition. Before the completion date, the purchaser discovered that 56% of the land was intended to be acquired for the purpose of constructing a road. Accordingly, the purchaser repudiated the agreement which repudiation the vendors refused to accept. In turn, the vendors notified the purchaser that they were terminating the agreement on the ground that the purchaser had failed to pay up the balance of the purchase price. Subsequently, the purchaser lodged a caveat to protect its interest over the land and also filed a civil suit against the vendors of the refund of the deposit. The learned Siti Norma Yaakob J. dealt with the question of the caveat as follows (at p. 344):

"(The purchaser) is not claiming specific performance of the agreement and by so doing, the respondent has clearly shown an intention that he was no longer interested in purchasing the property but only to seek a refund of the deposit and other expenses incurred. To that end, it cannot be said that it had any interest in the land capable of being registered. As the only persons who can lodge a caveat are those entitled to obtain a title or interest in land and since the respondent has demonstrated that it was no longer interested to acquire such interest, it cannot insist that the caveat be allowed to remain. From the nature of its civil suit, the respondent has only a claim *in personam* against the applicants for which a caveat is not the proper remedy as a means of protecting such a claim."

An authority from Australia which seems to be relevant is *Frankcombe* v. *Foster Investment Pty Ltd.*[4] There the facts were these. The plaintiff on 31 August 1973 entered into a contract for the sale of certain land to the defendant. A 10% deposit was paid by the defendant to the plaintiff's solicitor as stakeholder. The contract required completion by 12 October 1973. At the purchaser's request, the vendor agreed to extend the date for completion to 31 January 1974 on condition that the 10% deposit be made available to the vendor. Subsequently, it was further agreed between the parties that the completion date be further extended to 1 July 1974 subject to the payment of a further sum of $40,000 on account of the purchase price to the vendor. The purchaser failed to complete on the agreed extended date and the vendor gave to the purchaser notice to complete on 26 July 1974. On that date, the purchaser's solicitor produced a land tax certificate stating that the land was subject to a charge for land tax for the year 1973-74 – the amount whereof could not then be ascertained. Notwithstanding that the vendor gave a written undertaking to pay all land tax assessed, the purchaser gave notice on that day that it rescinded the contract on the ground that the vendor was in breach for being unable to complete on that day. Also on the same day, the purchaser lodged a caveat dated 25 July 1974 against the vendor's title claiming an estate or interest in the land as purchaser under the contract of 31 August 1973. Five days later on 31 July 1974, the vendor gave notice that he had terminated this contract, forfeited the deposit and would sue for breach because of purchaser's failure to complete. On 14 August 1974, the purchaser rejected the vendor's notice on the ground that it had already validly rescinded the contract and refused to remove its caveat until all the monies paid had been refunded. The court held that the rescission on the part of the purchaser was wrong. On the facts, the court also held that the vendor had validly rescinded the contract by his notice dated 31 July 1974.

To the question whether the purchaser was right in lodging the caveat on 26 July 1974, the court answered in the negative and stated the following (at p. 56):

"I infer that the purchaser had no intention of maintaining the contract on foot at the time it lodged the caveat but, on the contrary, intended to bring it to an end, as in fact it purported to do. There was no suggestion at the time of the vendor backing out; indeed the vendor was pressing for completion. In my opinion, the evidence leads to a conclusion that the purchaser had no reasonable cause on 26 July 1974 to lodge a caveat claiming an interest in the land as purchaser, and it follows that, having done so, it is liable to compensate the plaintiff for such damage, if any, as the plaintiff can prove to have been caused by the caveat."

By way of *obiter*, the court was also of the view that there would clearly have been no reasonable cause for the purchaser to maintain the caveat in that case, when Holland J. observed (also at p. 56):

"... there would clearly have been no reasonable cause for maintaining the caveat in this case. The purchaser's own notice of rescission was a declaration by it that there was no longer any contract on foot, and three days later the vendor was declaring the same thing by his notice. The purchaser's whole conduct from 26 July 1974, by its

notice of rescission, demand for repayment of purchase money, pleadings and case made at the hearing, has been one of denial of the continuing existence of the contract on which it purported to found its caveat; and from 30 July 1974, both parties were of one voice that the contract was ended."

While the facts in both *Buxton*[3] and *Frankcombe*[4] are somewhat different from the present case in that in those cases when the caveat was lodged, there was already a repudiation of the contract by the purchaser (which was not so in our present case), it seems to me that the reasoning therein is just as applicable here. The *obiter dicta* of Holland J. quoted above are on point. While the caveat might have been validly lodged on 7 November 1987, the question before me now is whether it is still in order for the defendants to insist that it remains notwithstanding that the defendants had themselves subsequently repudiated the contract. Indeed both parties had repudiated the contract, though the propriety of each repudiation is yet to be determined. In my view, from the date the defendants repudiated the contract, they no longer have any interest in the said property as purchasers. Their interest is only to recover the deposit paid to the plaintiffs. That is what the defendants are, in effect, seeking in Suit No. 2976/87. Perhaps a purchaser's lien might have arisen in favour of the defendants and in respect of which a different caveat might be lodged against the said property. That is a question yet to be argued and decided upon. Indeed, such a caveat was lodged by the defendants subsequent to the commencement of this originating summons though counsel for the defendants hastened to add that this second caveat was lodged out of abundance of caution. In any event, that question does not concern us here and on which I would not offer any views at this time. Accordingly, I rule that Caveat No. CV/52448A should have been withdrawn by the defendants.

Accordingly, I would grant an order in terms of prayers 1, 2 and 3 of the summons as follows:

(i) that the Caveat No. CV/52448A lodged by the defendants on 7 November 1987 against the said property be removed;

(ii) that the defendants do pay the plaintiffs compensation for any loss or damage occasioned by the defendants' wrongful retention of Caveat No. CV/52448A in the Registry of Land Titles;

(iii) that the defendants do pay the plaintiffs the costs of this application to be taxed.

I would, however, direct that assessment of the compensation payable under order (ii) should not be made until after the action in Suit No. 2976/87 has been finally concluded. This is because, in my view, the decision in that action is likely to have a direct bearing on the compensation payable.

Order accordingly.

Solicitors: *Abraham Low & Partners; Wee Ramayah & Partners.*

TOH TECK SUN v. MANDARIN GARDENS PTE. LTD.

[O.C.J. (Chan Sek Keong J.C.) 6 April 1988]

[Singapore – Originating Summons No. 47 of 1988]

Land Law – Conveyancing – Sale and purchase of unit in condominium – Completion statement incorrect – Persistent requests for fresh notice to complete and fresh completion statement – Completion dates expired – Completion not made – "Default" – Meaning of – Claim for interest on later completion – Nature of a completion statement – Singapore Law Society's Conditions of Sale 1981, condition 8.

The plaintiff agreed to purchase a condominium unit from the defendants. The defendants, however, sent an incorrect notice to complete and completion statement to the plaintiff. Due to the persistent requests of the plaintiff for a fresh notice to complete and a completion statement, completion of the purchase was not made at the relevant dates. Thereafter, the plaintiff claimed interest for late completion.

Held, dismissing the plaintiff's claim: (1) the function of a completion statement is to inform the purchaser the amount due from him on completion. It fulfils no other function. There is no fundamental principle that where the vendor fails to give a completion statement to a purchaser, the purchaser is under no obligation to complete on the date fixed for completion;

(2) the absence of a corrected completion account was not a sufficient reason for not completing the purchase in view of the fact that his solicitors were fully aware of the actual amount that was due;

(3) the delay in the completion on the relevant dates was attributable solely to the default of the plaintiff;

(4) the plaintiff was ordered to pay interest at 10% on the balance of the purchase price from 29 April 1987 to the date of actual completion.

Cases referred to:

(1) *Re Bayley Worthington & Cohen's Contract* [1909] 1 Ch. 648 (folld).

(2) *Killner* v. *France* [1946] 2 All E.R. 83 (refd).